

General Drivers and Helpers Union, Local No. 749, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and Michael N. Petkovich, Employer Representative, for and on Behalf of American Colloid Company. Case 18-CB-1883

April 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

Upon a charge and an amended charge filed for and on behalf of American Colloid Company (the Employer or American Colloid) by Michael N. Petkovich on December 5 and 23, 1988, respectively, the General Counsel of the National Labor Relations Board issued a complaint on January 19, 1989, against the Respondent, General Drivers and Helpers Union, Local No. 749, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (the Respondent or Local 749), alleging that it violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act. Copies of the complaint and notice of hearing were served on the Respondent and the Charging Party. Thereafter, the Respondent timely filed an answer denying the commission of any unfair labor practices.

On April 13, 1989, the parties jointly moved the Board to transfer this proceeding to the Board, without benefit of a hearing before an administrative law judge, and submitted a proposed record consisting of the formal papers and the parties' stipulation of facts with attached exhibits. On May 4, 1989, the Deputy Executive Secretary granted the motion, approved the stipulation, and transferred the proceeding to the Board. Thereafter, the General Counsel, the Respondent, and the Charging Party filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

American Colloid Company, a Delaware corporation with an office and place of business in Belle Fourche, South Dakota, is engaged in the mining and processing of bentonite. During the calendar year ending December 31, 1988, a representative period, American Colloid, in the course and conduct of its business operations, sold and shipped from its Belle Fourche, South Dakota facility goods and materials valued in excess of \$50,000 directly to points located outside the State of

South Dakota. During the same period, American Colloid purchased and received at its Belle Fourche, South Dakota facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of South Dakota. We find that American Colloid is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The issues presented in this case are as follows:

1. Whether the Respondent violated Section 8(b)(1)(A) of the Act by refusing to honor the requests of employees Charles Scheele and Don Anderson to resign from their membership in the Respondent, and by notifying its members that they would not be permitted to resign their membership in the Respondent at will.

2. Whether the Respondent violated Section 8(b)(1)(A) and (2) of the Act by demanding, by letter and by filing and pursuing a grievance, that American Colloid continue to withhold union dues from the paychecks of Scheele and Anderson after they had resigned from their union membership.

A. Facts

The Employer and Local 749 are parties to a collective-bargaining agreement effective from July 16, 1987, to July 16, 1989. The agreement does not contain any provision requiring union membership, but provides that employees may authorize the Employer to make monthly monetary deductions from their paychecks in amounts equal to periodic union dues, and remit those amounts to Local 749, by executing a dues-checkoff authorization card. Employees Charles Scheele and Don Anderson, both members of Local 749, signed authorization cards on, respectively, June 5, 1979, and June 26, 1984.¹

¹ The authorization cards signed by Scheele and Anderson provide:

CHECKOFF ASSIGNMENT

I, the undersigned hereby authorize my employer, the American Colloid Company to deduct from my wages my union dues, consisting of initiation fees, monthly fees, fines and uniform assessments owing [sic] to General Drivers and Helpers Union, Local 749 of the I.B. of T.C.W.& H. of A., of which I am a member or about to become a member, and direct that such amounts so deducted be sent to the Secretary- Treasurer of said Local Union, or to any authorized representative of said Local Union, for and on my behalf. These deductions are to be made in the following manner:

_____ per week until my account is paid up in full, including the current month's dues; and thereafter \$_____ per month, or an amount equal to the current monthly fees at the time of deduction, plus any special uniform assessments levied by the Local.

This authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company, or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, unless I give written notice to the Company and the Union at least sixty (60) days

On October 10, 1988,² Scheele notified Local 749 of his resignation of union membership. On November 2, Anderson notified Local 749 of his resignation from union membership.³ Local 749 did not accept their resignations. On November 2, Local 749 sent a letter to its members who were employed by American Colloid stating that it was not true that “[u]nion members can get out of the Union anytime they want to” and stating further that “[t]he Union Contract [sic] spells out how and when a member can get out of the Union.”

Shortly after submission of their resignations, Scheele and Anderson presented the Employer’s plant manager with written requests to terminate their dues-checkoff authorizations. The Employer honored their requests and ceased deducting dues from the paychecks of Scheele and Anderson commencing in November. Local 749 removed Scheele and Anderson from union membership because of their failure to pay dues in November 1988 and subsequent months.

On November 18, Local 749 filed a grievance against American Colloid contending that its failure to deduct monthly dues from the paychecks of Scheele and Anderson violated the provision of the parties’ collective-bargaining agreement directing that dues-checkoff authorizations are irrevocable and may only be revoked during certain specified time periods.⁴ The grievance demanded that American Colloid continue to make deductions from the paychecks of Scheele and Anderson. On November 29, American Colloid responded that it would not process the grievance because it believed that the Respondent’s attempt to force it to collect dues from the wages of employees who had resigned from union membership was violative of the National Labor Relations Act.

By letters dated December 5 and 8, the Respondent again requested that American Colloid continue to deduct dues from the paychecks of Scheele and Anderson until such time as they were permitted to cancel their authorizations in accordance with the terms of the parties’ collective-bargaining agreement. The Respondent additionally requested that its grievance be submitted to arbitration. American Colloid has refused to process the grievance further and has refused to submit the dispute to arbitration.

and not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

² All subsequent dates are in 1988.

³ Both resignations were submitted to the Employer’s plant manager, who forwarded the resignations to Local 749.

⁴ Art. III, sec. (a), of the collective-bargaining agreement provides in pertinent part:

Such voluntary written authorization shall be irrevocable for one (1) year from the date of this Agreement, and shall automatically renew itself for successive one (1) year periods thereafter unless the employee gives written notice of termination to the COMPANY and the UNION at least sixty (60) days and not more than seventy-five (75) days prior to any anniversary date of this Agreement, provided there is in effect an Agreement between the COMPANY and the UNION authorizing such deductions.

B. Contentions of the Parties

The General Counsel and the Employer contend that a union may not restrict the right of its members to resign from membership and argue that Local 749 violated the Act by refusing to honor the resignation requests of Scheele and Anderson, and by informing its members that they would not be permitted to resign from membership at will. The General Counsel and the Charging Party contend further that, under the rule set forth in *Machinists Local 2045 (Eagle Signal)*,⁵ Scheele’s and Anderson’s resignation from the Respondent operated to revoke their dues-checkoff authorizations. The Board held in *Eagle Signal* that resignation from union membership will revoke a checkoff authorization, even if the resignation does not occur during the allowable revocation period, where the authorization itself makes payment of dues a quid pro quo for union membership. The General Counsel and the Charging Party contend that the language of the checkoff authorizations signed by Scheele and Anderson provide that payment of dues is a quid pro quo for union membership.⁶ Accordingly, it is argued that under *Eagle Signal* the Respondent unlawfully attempted to force the Employer to continue to withhold dues from the wages of Scheele and Anderson following their resignation from membership in the Respondent.

Local 749 essentially concedes that its failure to accept the resignation requests of Scheele and Anderson is unlawful.⁷ Local 749 contends, however, that the checkoff authorizations voluntarily signed by Scheele and Anderson are contracts which may only be revoked within the contractually permissible period. Because Scheele and Anderson failed to revoke the authorizations within that permissible period, Local 749 contends that it may lawfully continue to enforce the authorizations even after their resignations from union membership. Accordingly, Local 749 argues that it did not violate the Act by demanding that American Colloid continue to withhold dues from the paychecks of Scheele and Anderson after their resignation from union membership.

C. Discussion

It is well established that a union may not lawfully restrict the rights of its members to resign from membership. *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330, 1336 (1984). We find, accord-

⁵ 268 NLRB 635 (1984).

⁶ The General Counsel and the Charging Party note the parties’ stipulation that “payment of the dues and fees in accordance with the terms of the [checkoff] assignments is in exchange for the privileges of membership in Respondent.”

⁷ Since Local 749 nevertheless removed them from membership for non-payment of dues, Local 749 argues that any violation of the Act stemming from its refusal to accept the resignations is de minimis, and that no remedial relief is necessary.

ingly, that the Respondent violated Section 8(b)(1)(A) of the Act by notifying its members who were employed by American Colloid that they would not be permitted to resign their membership at will, and by refusing to honor the requests of members Scheele and Anderson to resign from the Respondent. *Auto Workers Local 73 (McDonnell Douglas Corp.)*, 282 NLRB 466 (1986).⁸

The remaining inquiry is to determine the effect of Scheele's and Anderson's resignation of union membership on their dues-checkoff authorizations. In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,⁹ the Board acknowledged judicial criticism of the *Eagle Signal* analysis¹⁰ and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization.

The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation from union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.¹¹ In order to give full effect to these fundamental labor policies, the Board held as follows:

[W]e will construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of union membership. [Id. at 328–329.]¹²

⁸We reject the Respondent's contention that its refusal to accept Scheele's and Anderson's resignation requests was de minimis. The Respondent's conduct was not an isolated event but occurred in conjunction with the Respondent's message to the entire bargaining unit that it would not be permitted to resign at will.

⁹302 NLRB 322 (1991).

¹⁰*NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

¹¹*Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

¹²In *Lockheed*, the Board left open the question of whether the presumption would be applicable in the context of a lawful union-security provision. In the

Applying the analysis of *Lockheed* to the facts of this case, we find that the Respondent has failed to show that the checkoff authorizations signed by Scheele and Anderson obligated them to pay dues after their resignation from union membership. As in *Lockheed*, all that they authorized was the deduction of dues owing to the Union "of which I am a member or about to become a member." They did not clearly agree to have deductions made after they had resigned from union membership.

We thus find that these partial wage assignments made by Scheele and Anderson were conditioned on their union membership and were revoked when they ceased being members. Accordingly, we find that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by filing and pursuing a grievance against American Colloid demanding that it continue to withhold union dues from the paychecks of employees Scheele and Anderson after their resignation from union membership, and by repeating its demand by letter to American Colloid.

CONCLUSIONS OF LAW

1. American Colloid Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, General Drivers and Helpers Union, Local No. 749, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to honor the requests of employees Charles Scheele and Don Anderson to resign from union membership, the Respondent has violated Section 8(b)(1)(A) of the Act.

4. By informing its members that they would not be permitted to resign from the Union at will, the Respondent has violated Section 8(b)(1)(A) of the Act.

5. By filing and pursuing a grievance against American Colloid Company demanding that it continue to withhold union dues from the paychecks of Charles Scheele and Don Anderson after their resignation from union membership, and by repeating its demand by letter to American Colloid, the Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

6. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to, inter alia, withdraw its grievance filed November 18, 1988, demanding that that American Colloid continue to withhold union dues from the pay-

absence of a union-security clause requiring union membership here, the *Lockheed* test is applicable to this case.

checks of Charles Scheele and Don Anderson after their resignation from union membership.

ORDER

The National Labor Relations Board orders that the Respondent, General Drivers and Helpers Union, Local No. 749, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to honor the requests of its members to resign from union membership.

(b) Informing its members that they would not be permitted to resign from the Union at will.

(c) Filing and pursuing a grievance against American Colloid Company demanding that it continue to withhold dues from the paychecks of employees after their resignation from union membership, and repeating its demand by letter, where the terms of the employees' voluntarily executed checkoff authorization do not clearly and explicitly impose any post resignation dues obligation on the employees.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw its grievance filed November 18, 1988, demanding that American Colloid continue to withhold union dues from the paychecks of employees after their resignation from union membership.

(b) Post at its business office, meeting halls, and other places where notices to members are customarily posted and, with permission, at the Employer's Belle Fourche, South Dakota facility, copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent im-

mediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps it has taken to comply.

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse the requests of our members to resign from membership in the Union.

WE WILL NOT inform our members that they will not be permitted to resign from the Union at will.

WE WILL NOT file and pursue a grievance against American Colloid Company demanding that it continue to withhold dues from the paychecks of employees who have resigned from union membership, and

WE WILL NOT repeat our demand by letter to American Colloid.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw our grievance filed November 18, 1988, demanding that American Colloid continue to withhold union dues from the paychecks of employees after their resignation of union membership.

GENERAL DRIVERS AND HELPERS
UNION, LOCAL NO. 749, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMERICA,
AFL-CIO

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."